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Congressional Information Service, Inc.
4520 East-West Highway
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Joint Committee on Taxation
JCX-29-91
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DESCRIPTION OF ADDITIONAL TAX TECHNICAL CORRECTIONS [In addition to the Tax Technical Corrections included in H.R. 1555][1]

A. Amendments Related to the Revenue Reconciliation Act of 1990

1. Application of Small Producer Wine Credit to Bonded Warehouses.--Wine can be transferred without payment of excise tax to bonded warehouses which then become liable for tax on the transferred wine. The proposed technical correction would clarify that producers eligible for the small winery production credit may continue to transfer wine without payment of tax to bonded warehouses, with the warehouses claiming the credit on behalf of the producers under a "step-in-the-shoes" rule.

2. Determination of Bond Levels for Small Wine Producers.--Wine producers are required to post bond as a condition of legally producing the beverage. The amount of the required bond is related to projected excise tax liability. The proposed technical correction would clarify that the Bureau of Alcohol, Tobacco, and Firearms may take into consideration, when setting bonds, the amount of small winery production credit projected to be available to a small wine producer.

3. Application of Floor Stocks Tax Refunds for Cigarettes Returned to Manufacturers.--Floor stocks taxes will be imposed on cigarettes held beyond the manufacturers' level on January 1, 1993 (the date the cigarette excise tax rates are next scheduled to increase). Refunds are made for tax paid on cigarettes that subsequently are withdrawn from the market. The proposed technical correction would clarify that these refunds may be made to manufacturers when cigarettes are returned to them for credit by, or on behalf of, the persons who actually paid the floor stocks tax.

B. Amendments to the 1989 Act

1. Clarification of Treatment of Carryover of Excess Interest under Earnings Stripping Rules.--The 1989 Act provided rules to prevent avoidance of taxation through the

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[1] For a description of the tax technical corrections in H.R. 1555 as introduced, see Joint Committee on Taxation (JCX-5-91, March 21, 1991).

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payment of excessive amounts of tax-exempt interest to related corporations (Code sec. 163(j)). The provision provides a safe harbor rule under which a payor with a sufficiently low debt/equity ratio is not subject to disallowance of deductions for such interest payments. Questions have arisen as to how the safe harbor works when there is excess interest from a year in which the safe harbor is not met that is carried over to a subsequent year in which the safe harbor is met. The proposed technical correction would clarify that excess interest that is carried forward may be allowed or disallowed in the subsequent year without regard to the debt/equity ratio in that year.

2. Health care continuation rules.--The 1989 Act amended the health care continuation rules to provide that, in the case of a covered employee who becomes entitled to Medicare, qualified beneficiaries (other than the covered employee) are entitled to 36 months of continuation coverage. One possible interpretation of the statutory language, however, would permit continuation coverage for up to 54 months. This extension of the coverage period was not intended. The proposed technical correction would amend both title I of the Employee Retirement Income Security Act and the Code (sec. 4980B) to limit the continuation coverage in such cases to no more than 36 months.

C. Amendments to the 1988 Act

1. Estate Tax Unified Credit Allowed Nonresident Aliens Under Treaty.--To the extent provided by treaty, the estate of a nonresident alien is allowed the same unified credit granted an estate of a U.S. citizen (i.e., $192,800) multiplied by the percentage of the gross estate situated in the United States. The proposed technical correction would clarify that exempted property need not be treated as situated in the United States in determining the proportional unified credit under a treaty.

D. Amendments to the 1987 Act

1. Information Reporting by Foreign-Owned Corporations and with Respect to Foreign Corporations.--The 1986 Act amendments to sections 6038 and 6038A each included a reference to information required by the Treasury Secretary for purposes of carrying out section 453C (the proportionate disallowance rule). Section 453C was repealed by the 1987 Act. The proposed technical correction would remove these references as deadwood.

E. Amendments to the Tax Reform Act of 1986

1. Passive Loss Disposition Rule.--Under the Tax Reform Act of 1986, if a passive activity is disposed of in

a transaction in which gain or loss is recognized, any overall loss from the activity is allowed against other income (whether active or passive). The computation of the overall loss from the activity is unclear in cases where there is a gain from the disposition of the passive activity. The proposed technical correction would compute the overall loss from the activity by netting all items of gain or loss from the activity for the year of disposition.

2. Branch-level Interest Tax.--In the Tax Reform Act of 1986, Congress enacted a branch-level tax on interest (Code sec. 884(f)). The tax was intended to apply to amounts of interest allocated to effectively connected income. Nonetheless, the statute generally limits application of the tax to interest "allowable as a deduction." This language arguably omits from application of the tax non-deductible amounts of interest that are allocable to effectively connected income (e.g., capitalized interest). The proposed technical correction would clarify that the branch level tax applies to all interest allocable to effectively connected income.

3. Source Rules for Sales of Inventory.--Section 865, enacted in the Tax Reform Act of 1986, provides rules for the sourcing of gain and loss from certain property sales. Section 865 was not intended to alter the source rules applicable to sales of inventory. In referencing the controlling sections for inventory sourcing in section 865(b)(2), a reference to section 863(a) was inadvertently omitted. The proposed technical correction would add this cross reference.

4. Correction of 1986 Act Transitional Rule for Tax-Exempt Bonds for Cleveland Domed Stadium.--The Tax Reform Act of 1986 placed restrictions on the use of tax-exempt bonds to finance sports stadiums. One of the transitional rules to that provision allowed tax-exempt bonds to be issued by Cleveland to finance a new sports stadium. After the enactment of that transitional rule, the State of Ohio transferred the ownership of sports stadiums from cities to counties. The proposed technical correction would provide that the terms of the 1986 Act transitional rule are not violated if the residual ownership of the stadium vests in the county where it is located (e.g., Cuyougha County) rather than a city located in that same county (e.g., Cleveland). The amendment does not extend the time for issuing the bonds or otherwise affect the amount of bonds or the location or design of the stadium.